

New claims 29-40 have been added. These claims are directed to the products of the Group I claims and should be examined together with them at this time. These new claims are supported by the specification and the originally filed claims so that there is non issue of new matter in introducing them at this time.

Before addressing the claim rejections, a brief summary of the present invention would be helpful to highlight the critical features of the present claims and distinguish such from the prior art.

The present invention is directed to a confectionery product that has a high vegetable solid content. The confectionery of the present claims promotes vegetable consumption, especially for those who do not like the taste of vegetables. Thus, the advantages of the present invention is that it is a vehicle for vegetable consumption, while offering a pleasant taste much like a chocolate or other confectionery product.

The high vegetable content of the product supplies a consumer with valuable nutrition and the fat component, which is in a continuous phase, provides a product with smooth and melt-in-the-mouth characteristics, similar to chocolate. Accordingly, claim 1 recites a confectionery product comprising a vegetable component and a fat component in a continuous phase, and claim 4 recites that the fat component surrounds the vegetable solid center of the product.

Claims 1 and 4 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,431,112 to Durst (hereinafter "Durst"). Applicants traverse this rejection for the reasons below.

First and foremost, Durst does not disclose or suggest a confectionery product that is similar to chocolate. Secondly, Durst does not disclose or suggest a product characterized by a smooth, melt-in-the mouth sensations, as does the present invention. Instead, Durst discloses a food bar consisting of edible particles, which are bound together by a dispersion comprising fat, a film-former and water capable of being mixed with water without release of fat. (See Column 1, lines 57-61). The invention of Durst is a food unit to be dispersed in water to form soup or alternatively, to be eaten without further preparation. Clearly, the food bar of Durst is not a confectionery even though it does disclose sucrose as a component of the binder, as noted by the Examiner. Arguably, all processed foods contain at least some sucrose or other sugar, thus the mere presence of a sugar does not suggest a confection.

Moreover, the binder disclosed in Durst is composed of a discontinuous phase of fat globules encapsulated by a continuous phase of water and a film former. As stated above, the present claims recite that the fat of the present invention is in a continuous phase.

Anticipation under 102 can be found only if a reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985). Accordingly, as Durst does not show exactly what is claimed, the anticipation rejection has been overcome. Therefore, Applicants request that the Examiner withdraw the rejection to claims 1 and 4 under 35 U.S.C. 102(a) in view of Durst.

Claims 1 and 4-6 were rejected under 35 U.S.C. 102(a) as being anticipated by DE 2746479 for the reasons on page 4 of the office action. In response, Applicants traverse for the reasons below.

DE 2746479 discloses a confectionery with an adulterant consisting of dried beet, bran and Soya flour. The following examples are disclosed in the cited reference: Example 1 recites: 13% cocoa, 21% cocoa butter, 2% Soya flour, 20% whole milk powder, 29% sugar and 15% bran; Example 2 recites: 13% cocoa, 21% cocoa butter, 2% Soya flour, 20% whole milk powder, 29% sugar and **15% beet**; Example 3 recites: 26% hazelnut, 14% cocoa butter, 33% sugar, 13% whole milk powder, 4% Soya flour, and **10% beet**.

The cited reference does not anticipate the present claims; the only non-cereal vegetable component disclosed is beet, in an amount of 15% in example 2, and 10% in example 3. Thus, a non-cereal vegetable component of an amount above 15%, as recited by independent claim 1 or between about 30% and 60% as recited claims 4 and 39 is not disclosed. Moreover, the cited reference does not disclose a fat component in the continuous phase, which provides a confectionery with characteristics similar to chocolate, i.e., smooth, melt-in-the-mouth sensations. Therefore, the cited reference does not anticipate any of the present claims. Accordingly, the rejection of claims 1 and 4-6 under 35 U.S.C. 102(a) by DE 2746479 should be withdrawn.

Claims 2-3 and 7-14 were rejected under 35 U.S.C. 103(a) as being obvious in view of DE2746479 for the reasons set forth on pages 4 and 5 of the Office Action. Applicants traverse this rejection.

DE 2746479 is directed to a confectionery, which includes an adulterant to improve digestion and reduce the sensation of hunger. It does not teach or suggest a confectionery product that provides a pleasurable, tasty, vehicle for vegetable consumption, designed especially for children and others who do not like the taste of vegetables. Moreover, the cited art does not teach or suggest a product containing relatively large amounts of non-cereal vegetable, i.e., amounts above 15% of the total weight of the confection, while providing a smooth texture and melt-in-the-mouth sensation similar to those of a chocolate product. Therefore, not only is the purpose of the cited reference different from that of the present

confectionery, but the disclosure of the cited reference does not suggest a confectionery with large amounts of vegetable consumption. For example, present claim 2 recites that the vegetable component is present in an amount ranging from 30 to 60% by weight of the total confectionery. This range is four times greater than that suggested by the cited reference!

Furthermore, the cited reference teaches away from the present invention. Example 1 discloses a confectionery with no vegetable component. Clearly, such disclosure represents that the cited reference is not concerned with increasing vegetable consumption, as is the present invention.

The cited art does not disclose or suggest a confectionery product with a high vegetable component and a fat component, which provides smooth, melt-in-the-mouth characteristics. Accordingly, the cited art does not teach or suggest the confectionery of the present claims. Therefore, Applicants respectfully request that the Examiner withdraw the rejections to claims 2, 3 and 7-14 under 35 USC 103(a).

Claims 1-14 were rejected under 35 U.S.C. 103(a) as being obvious over DE 4224356 for the reasons set forth on page 5-6 of the Office Action. Applicants traverse this rejection.

DE 4224356 generally discloses a food product that has hot or warm chocolate used as a binder for meat, sausage, egg, vegetable, flowers, leaves, etc. The chocolate mass is simply used as a binder to fix the shape of the meat or vegetable part. The cited art is not directed to a confectionery to increase vegetable consumption, as in the present invention. Therefore, the cited reference does not offer a solution for increasing the consumption of vegetables for people who find vegetables distasteful. Clearly, the cited art does not even provide a confectionery product.

In the present invention, the vegetable solids replace some of the cocoa solids of the fat component thereby providing a product with similar texture as a chocolate. This final texture is totally different than that of the cited reference, which simply uses a chocolate mass as a binder for vegetable or meat. Binding vegetable by a chocolate mass would not provide a confectionery product having characteristics similar to chocolate in terms of texture, melt-in-the-mouth sensation and taste.

The present invention, as described above, is neither taught, disclosed or suggested by the cited reference. Accordingly, the present claims are not rendered obvious by DE 4224356. Thus, Applicants respectfully request that the Examiner withdraw the rejection of claims 1-14 under 35 U.S.C. 103(a).

Applicant submits that the entire application is now in condition of allowance, early notice of which would be appreciated. Should the Examiner not agree with the Applicant's

position, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the application.

No fee is believed to be due for this submission. Should any fees be due, however, please charge such fees to Winston & Strawn Deposit Account No. 501-814.

Respectfully submitted,

Date: _____

10/25/01



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APPENDIX A - MARKED UP VERSION

1. (Amended) A confectionery product comprising a mixture of solid fat and at least 15% by weight of non-cereal vegetable [particles which are] solids dispersed in a continuous fat phase of the solid fat which serves as a matrix for the vegetable solids to form a stable shape for the product [shaped vegetable-fat mixture upon setting] and to impart a confectionery texture to the product.

2. (Amended) The confectionery product according to claim 1, wherein the non-cereal vegetable solids [particles] comprise finely ground particles having a size of about 80 microns or less.